

September 9, 2005

AGAR ADVISORY

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
AGAR ADVISORY NO. 79

Hurricane Katrina Contingency Contracting Authorities, Proclamation of the President Suspending the Davis Bacon Act and Waivers for Use of Convenience Checks for Disaster Recovery and Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions

INTRODUCTION: The purpose of this Agriculture Acquisition Regulation (AGAR) Advisory is to establish contingency contracting authorities, disseminate information concerning the suspension of the Davis Bacon Act in specific counties, and disseminate waivers related to disaster recovery in the aftermath of Hurricane Katrina.

SUMMARY: (1) The Department of Agriculture (USDA) Senior Procurement Executive by this AGAR Advisory has raised the contingency contracting authorities pursuant to the authorities granted under Section 1443 of Public Law 108-136 codified at 41 U.S.C. 428a and as promulgated by the Civilian Agency Acquisition Council Letter 2005-04 dated September 7, 2005, and based on the September 8, 2005 Proclamation by the President to suspend the Davis Bacon Act for counties devastated by Hurricane Katrina. (2) By memorandum dated September 9, 2005, the USDA Senior Procurement Executive has granted a waiver from AGAR Advisory 52, Prohibition on Using Convenience Checks for Purchases or Payments, and a waiver from the maximum single purchase limit in Departmental Regulation (DR) 5013-6, for purchases in direct support of Hurricane Katrina disaster recovery efforts. (3) The USDA Office of the Chief Information Officer (OCIO) has established an emergency blanket waiver for purchases of information technology made to respond to the Hurricane Katrina emergency. (4) The President has suspended the Davis Bacon Act for counties devastated by Hurricane Katrina.

SPECIFIC ISSUES:

1. Contingency Contracting Authorities

Pursuant to Civilian Agency Acquisition Council Letter 2005-04 dated September 7, 2005 and the September 8, 2005 Proclamation by the President (copies attached), effective the date of this AGAR Advisory, the following contracting thresholds are raised:

- a. The micro-purchase threshold as defined in Federal Acquisition Regulation

(FAR) 2.101 is raised from \$2,500 to \$15,000 for acquisitions of supplies or services used to support the contingency operation for Hurricane Katrina disaster recovery.

For construction in counties in which the Davis Bacon Act has been suspended by Proclamation dated September 8, 2005, the micro-purchase threshold is raised from \$2,000 to \$15,000. The counties in which the Davis Bacon Act has been suspended are listed in the attached copy of the Proclamation.

The micro-purchase threshold for construction in counties not listed in the proclamation remains at \$2,000, regardless of whether the construction, repair, or alteration activity is in support of disaster recovery efforts.

- b. The simplified acquisition threshold as defined in FAR 2.101 is raised to \$250,000 for supplies or services that are used to support the contingency operation for Hurricane Katrina disaster recovery.
 - c. The FAR 19.502-1 requirements for setting aside acquisitions do not apply to purchases of \$15,000 or less for acquisitions used to support the contingency operation for Hurricane Katrina disaster recovery.
 - d. The threshold for application of the clauses FAR 52.225-1, Buy American Act—Supplies and FAR 52.225-13, Restrictions on Certain Foreign Purchases is \$15,000 for acquisitions used to support the contingency operation for Hurricane Katrina disaster recovery. (See FAR 25.1101 and 1103.)
2. AGAR Advisory 52, Prohibition on Using Convenience Checks for Purchases or Payments, and DR 5013-6, Use of the Purchase Card and Convenience Check

See the attached waiver for specific details concerning application of the authority summarized in subparagraphs 2.a. through 2.b. below. The USDA Senior Procurement Executive has authorized, for a period of 180 calendar days from September 9, 2005 (the date of the attached memorandum):

- a. The use of convenience checks in direct support of Hurricane Katrina disaster recovery efforts. Convenience checks used for such purpose will not count against annual waiver limits (caps); and
- b. The use of convenience checks over \$2,500 by warranted contracting officers up to the limits of their warrants, for payment of new emergency contracts in direct support of hurricane disaster recovery efforts.

Because of the need to ensure that cardholders have appropriate knowledge and expertise in making purchases over \$2,500, agencies shall follow the delegation procedure in Section 14, paragraph c of DR 5013-6 in authorizing cardholders to

make micro-purchases between \$2,500 and \$15,000.

3. USDA Information Technology (IT) Acquisition Approval Process (Reference AGAR Advisory No. 53) - Emergency Blanket Waiver Approval for Hurricane Related Information Technology Acquisitions

The USDA OCIO has established an emergency blanket waiver to the USDA OCIO IT acquisition approval process for procurement of IT hardware, software and IT contractor support services in the wake of the recent hurricane. Refer to the attached copy of the USDA OCIO memorandum dated September 7, 2005 (waiver number 1323) for specific details concerning this waiver.

4. Suspension of the Davis Bacon Act. By Proclamation dated September 8, 2005, the President has suspended the Davis Bacon Act for counties devastated by Hurricane Katrina. A copy of the Proclamation, which lists the counties in which the Davis Bacon Act has been suspended, is attached. For construction in counties in which the Davis Bacon Act has been suspended, the micro-purchase threshold is \$15,000. The micro-purchase threshold for counties not listed in the Proclamation remains at \$2,000, regardless of whether the construction, repair, or alteration activity is in support of disaster recovery efforts.
5. Applicability of the Service Contract Act. The Service Contract Act still applies to acquisitions of services over \$2,500, including micro-purchases between \$2,500 and \$15,000.

Questions regarding this advisory may be directed to:

Joe Daragan at 202-720-5729 or by email to joe.daragan@usda.gov - contingency contracting authorities and Proclamation by the President;

Joe Taylor at 202-401-0787 or by email to joe.taylor@usda.gov - convenience checks; and
Alesia Webster at 202-720-6898 or by email to alesia.webster@usda.gov - USDA OCIO IT acquisition approval waiver.

This advisory is available on the USDA Procurement Home Page at <http://www.usda.gov/procurement/policy/advisories.html>.

EXPIRATION DATE: Effective until cancelled or in accordance with expiration dates established in the individual attachments to this Advisory.

ATTACHMENTS:

CAAC Letter 2005-04 dated September 7, 2005, subject: Hurricane Katrina Contingency Contracting Authorities

Proclamation by the President dated September 8, 2005, Proclamation by the President:
To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina

USDA SPE Memorandum dated September 9, 2005, subject: Waiver for Use of

Convenience Checks for Disaster Recovery
USDA CIO Memorandum dated September 7, 2005, subject: Emergency Blanket
Waiver Approval for Hurricane Related Information Technology Acquisitions
(#1323)

[END]



CIVILIAN AGENCY ACQUISITION COUNCIL LETTER 2005-04

SEP 7 2005

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM:

Julia Wise
JULIA WISE

CHAIR

CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT:

Hurricane Katrina Contingency Contracting Authorities

In the aftermath of Hurricane Katrina, the Secretary of Defense and the Secretary of Homeland Security determined that existing circumstances warrant the exercise of authority in accordance with 41 USC 428a. As a result of this declaration, the emergency procurement authorities authorized by section 1443 of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. Law 108-136) are available. Therefore, pursuant to the authorities granted under Title XIV, Sec. 1443 of Pub. L. 108-136 codified at 41 U.S.C. 428a, and as implemented in the Federal Acquisition Regulations, the following authorities apply:

- The Micro-purchase threshold as defined in FAR 2.101 is \$15,000 for acquisitions of supplies or services that, as determined by the head of your agency, are to be used to support the contingency operation. (\$2,000 for construction subject to the Davis-Bacon Act).
- The Simplified Acquisition Threshold as defined in FAR 2.101 is \$250,000 for acquisitions of supplies or services that, as determined by the head of your agency, are to be used to support the contingency operation.
- The FAR 19.502-1 requirements for setting aside acquisitions do not apply to purchases of \$15,000 or less for acquisitions used to support the contingency operation.
- The threshold for application of the clauses FAR 52.225-1, Buy American Act--Supplies and FAR 52.225-13, Restrictions on Certain Foreign Purchases is \$15,000 for acquisitions that, as determined by the head of your agency, are to be used to support the contingency operation (see FAR 25.1101 and 1103).



For Immediate Release
Office of the Press Secretary
September 8, 2005

Proclamation by the President: To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina

A Proclamation by the President of the United States of America

1. Section 3142(a) of title 40, United States Code, provides that "every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes or laborers and mechanics."
2. Section 3142(b) of title 40, United States Code, provides that such "minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed . . ."
3. Under various other related acts, the payment of wages is made dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code.
4. Section 3147 of title 40, United States Code, provides that "[t]he President may suspend the provisions of this subchapter during a national emergency."
5. Several areas of the Nation have been recently devastated by Hurricane Katrina. The devastation from the hurricane has resulted in the largest amount of property damage from a natural disaster in the history of the Nation. An enormous but undetermined number of lives have been lost, and hundreds of thousands of homes and business establishments either destroyed or severely damaged. Hundreds of thousands of individuals have lost their jobs and their livelihood. An unprecedented amount of Federal assistance will be needed to restore the communities that have been ravaged by the hurricane. Accordingly, I find that the conditions caused by Hurricane Katrina constitute a "national emergency" within the meaning of section 3147 of title 40, United States Code.
 - (a) Hurricane Katrina has resulted in unprecedented property damage.
 - (b) The wage rates imposed by section 3142 of title 40, United States Code, increase the cost to the Federal Government of providing Federal assistance to these areas.
 - (c) Suspension of the subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141-3148, and the operation of related acts to the extent they depend upon the Secretary of Labor's determinations under section 3142 of title 40, United States Code, will result in greater assistance to these devastated communities and will permit the employment of thousands of additional individuals.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do by this proclamation suspend, as to all contracts entered into on or after the date of this proclamation and until otherwise provided, the provisions of subchapter IV of chapter 31 of title 40, United States Code, 40 U.S.C. 3141-3148, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code, as they apply to contracts to be performed in the following jurisdictions: the counties of Baldwin, Choctaw, Clarke, Mobile, Sumter, and Washington in the State of Alabama; the counties of Broward, Miami-Dade, and Monroe in the State of Florida; the parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard,

St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn in the State of Louisiana; and the counties of Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo in the State of Mississippi.

And, as to such contracts to be performed in such jurisdictions, I do hereby suspend, until otherwise provided, the provisions of any Executive Order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under section 3142 of title 40, United States Code;

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.

GEORGE W. BUSH

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Return to this article at:

<http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html>

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**United States
Department of
Agriculture**

Office of the
Assistant Secretary
for Administration

Office of
Procurement and
Property
Management

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Room 302
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Washington, DC
20024-9300

TO: Head of the Contracting Activity Designees

FROM: W. R. Ashworth
Director

SUBJECT: Waiver for Use of Convenience Checks for Disaster Recovery

SEP 9 2005

The purpose of this memorandum is to grant a waiver from AGAR Advisory 52, Prohibition on Using Convenience Checks, and a waiver from the maximum single purchase limit in Departmental Directive 5013-6, Use of the Purchase Card and Convenience Check, in direct support of Hurricane Katrina disaster recovery efforts.

AGAR Advisory 52 states, "Agencies and cardholders may not use convenience checks unless an applicable waiver allows such use." Each agency's annual waiver authority (cap) covers normal declining needs based on projected convenience check use where payments cannot be made by other means. The advisory states, "In the event of an unforeseen emergency, agencies may request authority to use convenience checks for transactions to cope with the emergency." Department Regulation 5013-6, paragraph 14 d, states, "The single purchase limit established for a warranted individual may not exceed the lesser amount of the individual's delegated authority or \$1 million, unless a waiver is authorized by the APC." Agencies have requested authority to use convenience checks to expedite recovery efforts from the effects of Hurricane Katrina and facilitate payments for disaster recovery contracts up to the warrant levels of contracting officers where there are no other practical methods under the circumstances.

Therefore, I hereby authorize, for a period of 180 calendar days from the date of this memorandum, the following:

1. Use of convenience checks in direct support of Hurricane Katrina disaster recovery efforts. Convenience checks used for such purpose will not count against annual waiver limits (caps); and,
2. Use of convenience checks over \$2,500 by warranted contracting officers up to the limits of their warrants for payment of new emergency contracts in direct support of hurricane disaster recovery efforts. Contracting officers are responsible to track payments made under such contracts.

Convenience checks are not authorized to pay invoices under existing non-disaster recovery contracts. Payment for these transactions will be made via the IAS to FFIS

Head of the Contracting Activity Designees
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interface or directly in FFIS as applicable when agency access to FFIS production is restored.

To aid the National Finance Center in issuing correct Internal Revenue Service Miscellaneous Income Form 1099s to vendors, cardholders shall require vendors to fill out and sign a Form W-9, Request for Tax Payer Identification Number and Certification, before issuing convenience checks. The W-9 should be retained by the cardholder for transaction reconciliation in PCMS.

For questions, contact Joe Taylor, OPPM, Procurement Policy Division, 202-401-0787.

cc: Agency Purchase Card Coordinators



United States
Department of
Agriculture

SEP - 7 2005

Office of the Chief
Information Officer

1400 Independence
Avenue SW

Washington, DC
20250

TO: Agency Heads

FROM: David M. Combs
Acting Chief Information Officer

A handwritten signature in cursive script, reading "David M. Combs", is placed over the printed name and title of the sender.

SUBJECT: Emergency Blanket Waiver Approval for Hurricane Related Information
Technology Acquisitions (#1323)

The Office of the Chief Information Officer is establishing a blanket waiver to procure Information Technology (IT) hardware, software and IT contractor support services in the wake of the recent hurricane. The blanket waiver approval applies to all affected USDA agencies. Acquisitions covered under this waiver include those IT purchases that are made to respond to the emergency. The emergency waiver will have an overall cap of \$25,000,000 for FY 2005 and FY 2006.

- Provide this office a copy of the contract within thirty days of execution along with the contract related data as shown in the attachment.
- Consistent with Executive Order 13360-Providing Opportunities for Service-Disabled Veteran Businesses (SDVB) To Increase Their Federal Contracting and Subcontracting, the agency should consult the Office of Small and Disadvantaged Business Utilization to identify opportunities to direct this acquisition towards a SDVB. The point of contact is Janet Baylor at 202-720-7117.

An electronic version of the attachment can be obtained by request. If you have any questions, please call me at (202) 720-8833 or have a member of your staff call Alesia Webster at (202) 720-6898.

Attachment

[illegible]